THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 5803 of 2007

DATED: 18.04.2007

Between:

M. Appalanaidu and another — petitioner

And

The Thandava Cooperative Sugars Ltd.,
rep. by its Managing Director,
Payakaraopet, Visakhapatnam District
and another.

Respondents

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 5803 of 2007

ORDER:

Aggrieved by the action of the respondents in proposing to retire the petitioners on attaining the age of 58 years, contrary to the memorandum of settlement dated 12.10.1990 entered into between the respondents-Management and workers, the petitioners filed the present writ petition.

Heard the learned counsel for the petitioners and the learned Government Pleader for Cooperative Societies.

The main contention of the learned counsel for the petitioners in this writ petition is that the petitioners come under workmen category, and as per the memorandum of settlement dated 12.10.1990 entered into between the workers and the respondents-Management, they have to continue the petitioners till they attain the age of 60 years, but the action of the respondents in proposing to retire the petitioners on attaining the age of 58 years, is illegal and contrary to the said memorandum of settlement entered into between them. He further contended that there is a dispute pending before the Government with regard to implementation of the said memorandum of settlement. He further contended that the judgment of this Court passed in W.A.No.1109 of 1995, and W.P.Nos.10537 and 10549 of 2002, dated 24.09.2004, and referred in the impugned order passed by the respondents-Management, has no application to the facts of this case.

Since the learned counsel for the petitioners contended that the

judgment of this Court passed in W.A.No.1109 of 1995, and W.P.Nos.10537 and 10549 of 2002, dated 24.09.2004, has no application to the facts of the present case, I have gone through the same.

In fact, the Full Bench of this Court in W.A.No.1109 of 1995, and W.P.Nos.10537 and 10549 of 2002, which the learned counsel for the petitioner contends has no application, considered similar issue as is raised in this writ petition and held thus:

> "The third contention is that the petitioners are workmen within the meaning of Industrial Disputes Act, therefore they have to be treated as such. This argument is without any basis because Rule 28(5)(1) of the Act does not make any distinction between workmen and non-workmen. It creates a distinction between Last Grade Servants and other paid Servant-Officer of the Society. Admittedly the petitioners are not in the Last Grade Service. The Rule has been made notwithstanding anything contained in the bye-laws, special bye-laws, service regulations or common cadre regulations of the Co-operative Societies. Therefore, the Rule applies to the petitioners with its full force and they have to retire at the age of 58 years."

In view of the said Full Bench judgment of this Court, the contention of the petitioners that they have to be continued till they attain the age of 60 years cannot be accepted.

The other contention of the petitioners with regard to memorandum of settlement dated 12.10.1990, is concerned, even according to their own admission there is a dispute pending before the Government, and as on today the Government has not taken any decision with regard to implementation of the said memorandum of settlement.

In the circumstances, I see no reason whatsoever to interfere with the action taken by the respondents in retiring the petitioners from

service on their attaining the age of 58 years.

The writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V.RAMANA, J.

Date:18.04.2007
CCM/nsr